NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. EBERT GORDON BEEMAN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2014 WDA 2011

Appeal from the Judgment of Sentence of December 22, 2011
In the Court of Common Pleas of Erie County
Criminal Division at No(s): CP-25-SA-0000118-2011

BEFORE: MUSMANNO, J., WECHT, J., and COLVILLE, J.*

MEMORANDUM BY WECHT, J.: **FILED MAY 1, 2013**

Ebert Beeman ["Appellant"] appeals the December 22, 2011 judgment of sentence finding him guilty of two counts of driving with a suspended license—habitual offender.[1] Appellant was sentenced to sixty days of incarceration on each count, with the two terms to run consecutive to one another. Upon review, we affirm.

Erie County Detective John Reddinger testified that Appellant was cited on August 27, 2009, for driving without insurance. As a result of that citation, Appellant's license was suspended for three years. Detective

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* Retired Senior Judge assigned to the Superior Court.

[1] 75 Pa.C.S.A. § 1543(a). At the time of the hearing, Appellant had been found guilty of violating Section § 1543(a) on six previous occasions. Trial Court Opinion, 1/24/12, at 2.

Reddinger had observed Appellant driving after the date of Appellant's license suspension. As a result, Detective Reddinger asked the Erie County Sheriff's Department to notify him anytime that department observed Appellant driving in public. The Sheriff's Department monitors the video room of the Erie County Courthouse. When department personnel observed Appellant on the video monitors, they would note Appellant's direction of travel after leaving the courthouse and report back to Detective Reddinger. Notes of Testimony ["N.T."], 12/22/11, at 21-32, 56-63.

On Wednesday June 1, 2011, Deputy Sheriff Tom Flores was stationed in the courthouse video room, where he observed real time video of Appellant leaving the courthouse, getting into a vehicle, and driving away. Deputy Flores reported Appellant's movements to his superior, Sheriff's Corporal Douglas Kubiak. ***Id.*** at 21-32.

On June 9, 2011, Deputy Jarrod Carr was stationed in the same video room, where he also observed Appellant leave the courthouse, get into a vehicle, and drive away. ***Id.*** at 38-40. Chief County Detective Larry Dombrowski viewed the videos of Appellant driving on June 1 and 9 with a suspended license. Detective Dombrowski issued citations to Appellant. ***Id.*** at 69-70.

On August 18, 2011, following a summary trial, Appellant was found guilty of both counts of driving with a suspended license. On September 15, 2011, Appellant filed a summary appeal on both convictions. On December 22, 2011, following a *de novo* trial, Appellant again was found guilty on both

counts. Appellant was sentenced to sixty days of incarceration on each count, with the sentences to run consecutively. On December 23, 2011, Appellant filed a notice of appeal. Appellant was ordered to file a concise statement of errors complained of an appeal pursuant to Pa.R.A.P. 1925(b). Appellant failed to comply. To date, Appellant has not filed a concise statement.

The trial court issued a Pa.R.A.P. 1925(a) opinion indicating that Appellant's appeal should be dismissed due to Appellant's failure to file a concise statement. Trial Court Opinion ["T.C.O."], 1/24/12, at 1. The docket indicates that the trial court ordered the concise statement on December 28, 2011. However, that order was returned to the Erie County Clerk of Courts Office on January 25, 2012 as undeliverable.

Generally, an appellant's failure to file a Rule 1925(b) statement will result in waiver of all of appellant's issues on appeal. ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998); ***Commonwealth v. Schofield***, 888 A.2d 771, 774 (Pa. 2005). However, we will not find waiver for failure to file a Rule 1925(b) statement if an appellant fails to receive notice of the entry of the order requiring the statement. ***Commonwealth v. Davis***, 867 A.2d 585, 588 (Pa.Super. 2005) (*en banc*). Pennsylvania Rule of Criminal Procedure 114(B)(1) requires that "[a] copy of any order or court notice promptly shall be served on each party's attorney, or the party if unrepresented." Where an appellant is not served with the trial court's order directing him to file a Rule 1925(b) statement, we will not penalize the

appellant for failing to file a 1925(b) statement by deeming the appellant's issues waived. ***Hartdegen v. Berger***, 839 A.2d 1100, 1105 (Pa. Super. 2003).

The trial court's docket indicates that the order directing Appellant to file a Rule 1925(b) statement was returned to the clerk of courts as undeliverable. Thus, Appellant was not served with notice of the order.[2] Accordingly, we decline to find Appellant's issues waived. ***Id.***

Appellant presents the following issues for our review:

1) Was Appellant improperly convicted because the trial court failed to inform or offer his right to a jury trial because he was subject to a maximum prison term of one year?

2) Furthermore, did the trial judge exceed her authority in allowing the constitutional rights of Appellant to be violated by the Sheriff Department's manner of investigation?

3) Did the trial judge exceed her authority in allowing admission of evidence prohibited by the Pennsylvania Constitution, statute, and/or case law?

4) Was the Appellant discriminated against by being the only elected official singled out for special observation and criminal investigation by the Erie County Sheriff's Department?

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[2] Appellant's counsel discovered that his mail was not being delivered to his address due to a post office error. Application to Reinstate Appeal, 4/16/12. There were two separate entities at counsel's previous address, which assertedly contravened post office regulations. ***Id.*** As a result, post office management approved a separate numerical address for counsel's law office, but failed to notify the postal service mail carrier. ***Id.*** For approximately eight weeks starting in December of 2011, counsel's mail was returned as undeliverable. ***Id.*** As a result, Appellant's counsel never received the trial court's order to file a Rule 1925(b) statement.

Appellant's Brief at 2.

We are constrained to find all but one of Appellant's issues waived for failure to present an argument. While Appellant presents a legal argument regarding his first issue, Appellant's argument as to his last three issues spans a single paragraph and contains a single citation to an inapplicable case. ***See*** Appellant's Brief at 5. Appellant cites ***Kopko v. Miller***, 842 A.2d 1028 (Pa. Cmwlth. 2004), in which the Commonwealth Court determined that sheriffs and deputies do not serve an investigative function under the Wiretap Act[3] and, therefore, cannot intercept wire, electronic, or oral communications. Appellant's Brief at 5. The Wiretap Act is not at issue in this case, and Appellant's citation to ***Kopko*** is not relevant to the resolution of Appellant's issues. Issues not supported by developed legal argument with citations to relevant legal authority are waived on appeal. ***Commonwealth v. Spotz***, 18 A.3d 244, 262 (Pa. 2011). Thus, Appellant's last three issues are waived for failure to present a developed legal argument.

In his first issue, Appellant asserts that he had a right to a jury trial because he was subject to a maximum prison term of one year. He is incorrect. "The right to a jury trial exists when a defendant faces a charge which, alone, could lead to imprisonment beyond six months."

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[3] 18 Pa.C.S.A. § 5708.

Commonwealth v. Harriott, 919 A.2d 234, 237 (Pa. Super. 2007). In ***Harriot***, we held that two petty offenses, which together amount to a possible year-long sentence, do not implicate the right to a jury trial:

> [T]here is no jury trial right if an offense bears a maximum incarceration of six months or less. Similarly, where a defendant is tried for multiple offenses which do not individually allow for imprisonment exceeding six months, there is no jury trial right on those particular offenses, even if multiple convictions could yield an aggregate incarceration above six months.

Id. (citations omitted).

Appellant cites ***Commonwealth v. Sperry***, 577 A.2d 603 (Pa. Super. 1990) to support his claim that a defendant being tried for a violation of 75 Pa.C.S.A. § 1543(a) (driving while operating privilege is suspended or revoked) is entitled to a jury trial when a maximum prison term of one year is possible. Pursuant to Section 6503(a),[4] habitual offenders of Section 1543(a) are subject to a mandatory sentencing enhancement. In ***Sperry***, a

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[4] Section 6503(a) states, in relevant part:

> **General offenses.--**Every person convicted of a second or subsequent violation of any of the following provisions shall be sentenced to pay a fine of not less than $200 nor more than $1,000 or ***to imprisonment for not more than six months***, or both:
>
> > Section 1543(a) (relating to driving while operating privilege is suspended or revoked). . . .

75 Pa.C.S.A. § 6503 (emphasis added).

different version of Section 6503(a) was in effect. In the previous version of Section 6503(a), a person guilty of a second violation of driving with a suspended license was subject to "imprisonment for not more than one year." 75 Pa.C.S.A. § 6503 was amended in 1986. A subsequent offender now is subject to "imprisonment for not less than 30 days but not more than six months." The amount of prison time that a habitual offender of Section 1543(a) faces for a single citation has decreased since our Court decided ***Sperry***. Accordingly, ***Sperry*** is not applicable.

Appellant was subject to no more than six months of incarceration for each separate offense. Thus, Appellant was not entitled to a jury trial.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Nicholas V. Cusatti

Deputy Prothonotary

Date: 5/1/2013